THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 294 of 2004

O r d e r:

Assailing the proceedings dated 24.10.2003, passed by the 1st respondent, namely the Regional Manager, rejecting the review petition, filed by the petitioner and confirming the order dated 19.12.2001 passed by the 2nd respondent, namely the Divisional Manager, whereunder he had set aside the order of removal dated 24.10.2001 passed by the 3rd respondent, namely Depot Manager, and directed reinstatement of the petitioner into service as fresh regular Driver, the petitioner filed the present writ petition.

The petitioner is a Driver with the respondents-APSRTC. On the ground that he caused an accident on 29.03.2001, the 3rd respondent, after full-fledged enquiry, vide order dated 24.10.2001, removed the petitioner from service. Assailing the said removal order, the petitioner preferred appeal to the 2nd respondent, who by order dated 19.12.2001, set aside the order of the 3rd respondent and directed reinstatement of the petitioner into service as fresh Driver. After acquittal of the petitioner by the criminal court in the criminal case registered against him, he filed review petition assailing the order of the 2nd respondent before the 1st respondent, who by reason of the impugned order, rejected the same.

The learned counsel for the petitioner submitted that the petitioner on seeing the cyclist coming from the opposite direction brought the bus to a halt, but the cyclist having lost control, hit the bumper of the bus from the front side and fell down, which resulted in his instantaneous death. He submitted that the petitioner is not

responsible for the accident, and this is evident from the fact that the 3rd respondent in his proceedings upon considering folio No. 16 held that the bus was almost at zero speed and that the cyclist hit the bus and fell down, which resulted in head injury and spot death, and also the fact that he was acquitted by the criminal court in the criminal case registered against him.

He submitted that though the 3rd respondent held that the bus was at zero speed and that the cyclist hit the bus and died, yet based on the perverse findings in the enquiry report, which held that the charges against the petitioner are proved, ordered his removal from service, which is illegal and arbitrary. He submitted that though the 2nd respondent giving the benefit of doubt has set aside the order of removal passed by the 3rd respondent in appeal, he committed an error in directing his reinstatement as fresh Conductor, and likewise the 1st respondent also committed a grave error in confirming the order of the 2nd respondent and rejecting the review petition filed by the petitioner.

He submitted that the findings recorded by the enquiry officer being based on no evidence, the impugned order passed by the 1st respondent, rejecting the review petition, filed by the petitioner against the order of the 2nd respondent, which set aside the order of the 3rd respondent, and ordered reinstatement of the petitioner as fresh Driver, is liable to be set aside and prayed that the same be set aside and the writ petition be allowed. In support of his argument that when the findings recorded by the lower authorities are perverse and based on no evidence, the High Court can interfere with the orders of removal or other punishment, he placed reliance on a judgment of the Division Bench of this Court in **M. Abdul Lateef v. Government of Andhra**

Pradesh[1], and of the apex Court in **Narinder Mohan Arya v. United India Insurance Co. Ltd.**[2].

The respondents filed counter-affidavit. The learned Standing Counsel for the respondents reiterating the stand taken by the respondents in the counter submitted that the petitioner has taken inconsistent stand, at one stage he stated that the cyclist having lost control, hit the bumper of the stationed bus, and at another stage stated that on seeing the cyclist, to avoid the accident, he applied brakes, but the cyclist fell down and succumbed to his injuries. At any rate, in the enquiry, the charges leveled against the petitioner were proved, and he having been held to be rash and negligent in driving the bus in the enquiry, was removed by the

3rd respondent, but considering the fact that the petitioner had no accident record, the 2nd respondent in appeal, set aside the order of removal passed by the 3rd respondent and ordered his reinstatement into service, which was confirmed by reason of the impugned order by the 1st respondent, who rejected the review petition filed by the petitioner. He thus contended that no interference is warranted with the impugned order, and prayed that the writ petition be dismissed.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents-APSRTC.

Though the enquiry officer held that because of rash and negligent driving of the petitioner, the cyclist died, the fact remains, the said finding is contrary to the evidence on record. The fact that the petitioner is not responsible for the accident is clear from the proceedings of the 3rd respondent, who considering folio No. 61 held that the cycle was neither damaged nor was run over by the bus, that the bus was almost in zero speed, and that the cyclist had hit the bus

and fallen from the cycle, which resulted in head injury and spot death. When the bus driven by the petitioner was said to be at zero speed, which indicated that the bus was not in motion,

I fail to understand how the petitioner can be held to be rash and negligent in driving and responsible for the death of the cyclist, and more so when the Joint Action report, the enquiry report officer as well as the proceedings of the 3rd and 2nd respondents, have found that the bus was at zero speed, indicating that the petitioner was not driving the bus when the cyclist hit the bus and succumbed to his injuries. May be the petitioner in his evidence stated that he had applied breaks on noticing the cyclist coming from the opposite direction, but the fact remains, when the cyclist hit the bus, the bus was not in motion. The 3rd respondent having found that the bus was at zero speed, committed an error in directing removal of the petitioner from service on the ground that he was rash and negligent in driving the bus. Though the 2nd respondent had set aside the order of removal from service, passed by the 3rd respondent, the fact remain, even he committed an error in directing the reinstatement of the petitioner into service, which order, was again erroneously confirmed by the 1st respondent in review petition, and more so without appreciating the evidence on record.

Thus, from the above discussion, it is clear that the order of removal passed by the 3rd respondent and his subsequent reinstatement into service as fresh Conductor by reason of the order of the 2nd respondent, is not only based on no evidence, but the findings recorded to the effect that the petitioner was rash and negligent in driving the bus, are contrary to the evidence adduced. The law is well settled that if the findings arrived at are based on no evidence or the findings recorded are perverse, the Court in exercise of its power of

judicial review, can interfere with such perverse findings and set at naught the proceedings of the primary authority, even if they were confirmed in further appeals by higher authorities. In **Narinder Mohan Arya v. United India Insurance Co. Ltd.**, the apex Court quoted its observations in **State of U.P. v. Mohammed Nooh**[3], wherein it was held:

> … The law is well settled that if an inferior court or tribunal of first instance acts wholly without jurisdiction or patently in excess of jurisdiction or manifestly conducts the proceeds before it in a manner which is contrary to the rules of procedure and which offends the superior court's sense of fair play, the superior court may, properly exercise its power to issue the prerogative writ of certiorari to correct the error of the court or tribunal of first instance, even if an appeal to another inferior court or tribunal was available and recourse was not had to it or if recourse was had to it, it confirmed what ex facie was a nullity…

In **Reserve Bank of India, Bangalore v. S. Mani & Ors.**[4], held that when the findings of the Tribunal are wholly perverse, and its decision based on no evidence or irrelevant factors not germane for the purpose of arriving at a correct finding of fact, the power of judicial review can be exercised.

The apex Court in S**tate in Narinder Mohan Arya v. United India Insurance Co. Ltd.**, held that the writ court should bear in mind the distinction between some evidence or no evidence, but the question that was required to be posed should have been as to whether some evidence adduced would lead to the conclusion as regard the guilt of the delinquent officer or not, and that the evidence adduced on behalf of the management must have nexus with the charges, and the enquiry officer cannot base his findings on mere hypothesis, and mere *ipsi dixit* on his part cannot be a substitute. The apex Court further held that the Court while exercising its power of judicial review should also apply its mind as to whether sufficient material had been brought on record to sustain the findings.

In the instant case, as stated above, the findings recorded by

the enquiry officer that the petitioner is guilty of rash and negligence is perverse and contrary to their own reports and findings, which recorded that the bus driven by the petitioner was at zero speed and that the cyclist has himself hit the bus and fell down and succumbed to his injuries. When it was doubtful whether the petitioner in fact had caused the accident, in which the cyclist died, and more so when the evidence on record showed that the cyclist himself hit the bumper of the bus and fell down and succumbed to his injuries, the 2nd respondent, in such facts situation, having given the benefit of doubt to the petitioner, ought to have set aside the order of removal and ordered reinstatement of the petitioner into service instead of ordering his reinstatement into service as fresh Driver, and given the facts situation and the evidence on record, the 1st respondent has also committed a grave error in confirming the order of the 2nd respondent, ordering the reinstatement of the petitioner into service as fresh Driver while setting aside the order of removal passed by the 3rd respondent.

For the foregoing reasons, the impugned order cannot be sustained, and the same is set aside and the writ petition is allowed as prayed for.

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N.V. RAMANA, J.

Dated: 14th November, 2006.
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[1] 2005 (2) ALT 762 (DB)
[2] 2006 LAB.I.C. 2114
[3] AIR 1958 SC 86
[4] 2005 AIR SCW 1729